Beneficial Innovations, Inc. v. Blockdot, Inc. et al Doc. 76

IN THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF TEXAS
MARSHALL DIVISION

BENEFICIAL INNOVATIONS, INC.,

Plaintiff,

v.

BLOCKDOT, INC., CAREERBUILDER, LLC, CNET NETWORKS, INC., DIGG, INC., EBAUM'S WORLD, INC., JABEZ NETWORKS, INC., THE NEW YORK TIMES COMPANY, THE WASHINGTONPOST.NEWSWEEK INTERACTIVE COMPANY, LLC, THE WEATHER CHANNEL INTERACTIVE, INC.,

Defendants.

CASE NO. 2:07-cv-263(TJW/CE)

JURY TRIAL DEMANDED

ANSWER AND AFFIRMATIVE DEFENSES
OF DEFENDANT E'BAUMS WORLD, INC.
TO PLAINTIFF'S SECOND AMENDED COMPLAINT

Defendant EBAUM'S WORLD, INC., ("***eBaum's***" or "***Defendant***") by and through its attorneys, CULLEY, MARKS, TANENBAUM & PEZZULO, LLP, files this Answer and Affirmative Defenses to Plaintiff, BENEFICIAL INNOVATIONS, INC.'s, ("***Beneficial***" or "***Plaintiff***") Second Amended Complaint ("***Complaint***") and states as follows:

1. Defendant is without knowledge or information sufficient to form a belief as to the truth of the allegations in Paragraph "1" regarding Plaintiff's ownership of U.S. Patent No. 6,712,702 (the "***702 Patent***") and U.S. Patent No. 6,183,366 (the "***366 Patent***") and therefore, denies the same. Defendant is without knowledge or information sufficient to form a belief as to those defendants and affirmatively denies the allegations in Paragraph "1" as they apply to eBaum's. The remaining allegations of Paragraph "1" are legal conclusions to which no

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response is required. To the extent that any response is required, such allegations are hereby denied.

2. Defendant admits that the Complaint alleges that this in an action for patent infringement under the provisions of the Patent Laws of the Untied States, Title 35, United States Code. Defendant admits that subject-matter jurisdiction of patent claims is conferred upon this Court by 28 U.S.C. §§ 1331 and 1338(a). Defendant denies any patent infringement and any remaining allegations set forth in Paragraph “2."

3. Defendant is without knowledge or information sufficient to form a belief as to the alleged business activities or as to the infringement by other defendants and therefore, denies the allegations set forth in Paragraph “3" as to those defendants. Defendant admits that eBaum’s is doing business in New York and elsewhere in the United States. Defendant denies any patent infringement of the 702 Patent and the 366 Patent. The remaining allegations set forth in Paragraph “3" are legal conclusions to which no response is required. To the extent that any response is required, such allegations are hereby denied.

4. Defendant is without knowledge or information sufficient to form a belief as to the truth of the allegations in Paragraph “4" and therefore, denies the same.

5. Defendant denies knowledge or information sufficient to form a belief as to the allegations set forth in Paragraphs “5", “6", “7" and “8."

6. Defendant eBaum’s admits so much of the allegation as set forth under Paragraph “9" of the Complaint to the extent that it is a corporation existing under the laws of the State of New York, and its principal place of business is located at 2590 Brighton Henrietta Townline Road, Rochester, New York.

9. Defendant denies knowledge or information sufficient to form a belief as to the alleged business activities or as to infringement by other defendants and therefore, denies Paragraphs "10", "11", "12" and "13."

CLAIM FOR INFRINGEMENT OF THE 702 PATENT

10. Defendant refers to and incorporates herein by reference, the responses to each of the allegations in Paragraphs "1" through "9" above.

11. Defendant admits that Exhibit "A" attached to the Complaint is what is believed to be a copy of the text of the 702 Patent, and that this document indicates that the United States Patent and Trademark Office issued the 702 Patent, entitled "*Method and System for Playing Games on a Network*," on March 30, 2004. Defendant denies that the 702 Patent was duly and legally issued. Defendant is without knowledge or information sufficient to form a belief as to the truth of the remaining allegations of Paragraph "15" and therefore, such allegations are hereby denied.

12. Defendant denies any patent infringement of the 702 Patent. Defendant is without knowledge or information sufficient to form a belief as to infringement by other defendants and therefore, denies the allegations in Paragraph "16" as to those defendants and affirmatively denies the allegations in Paragraph "16" as they apply to eBaum's.

13. Defendant denies any patent infringement of the 702 Patent. Defendant is without knowledge or information sufficient to form a belief as to infringement by other defendants and therefore, denies the allegations in Paragraph "17" as to those defendants. Defendant is without knowledge or information sufficient to form a belief as to the remaining allegations of Paragraph "17" and therefore, such allegations are hereby denied.

14. Defendant denies any patent infringement of the 702 Patent. Defendant is without knowledge or information sufficient to form a belief as to willfulness by other defendants and therefore, denies the allegations in Paragraph “18" as to those defendants and affirmatively denies the allegations in Paragraph “18" as they apply to eBaum’s.

15. Defendant denies any patent infringement. The remaining allegations of Paragraph “19" are legal conclusions to which no response is required. To the extent that any response is required, such allegations are hereby denied.

16. The allegations of Paragraph “20" require no response. To the extent that any response is required, such allegations are hereby denied.

CLAIM FOR INFRINGEMENT OF THE 366 PATENT

17. Defendant refers to and incorporates herein by reference, the responses to each of the allegations in Paragraphs “1" through “16" above.

18. Defendant admits that Exhibit “B” attached to the Complaint is what is believed to be a copy of the text of the 366 Patent and that this document indicates that the United States Patent and Trademark Office issued the 366 Patent, entitled *“Network Gaming System,”* on February 6, 2001. Defendant denies that the 366 Patent was duly and legally issued. Defendant is without knowledge or information sufficient to form a belief as to the truth of the remaining allegations of Paragraph “22" and therefore, such allegations are hereby denied.

19. Defendant denies any patent infringement of the 366 Patent. Defendant is without knowledge or information sufficient to form a belief as to infringement by other defendants and

therefore, denies the allegations in Paragraph “23" as to those defendants and affirmatively denies the allegations in Paragraph “23" as they apply to eBaum’s.

20. Defendant denies any patent infringement of the 366 Patent. Defendant is without knowledge or information sufficient to form a belief as to infringement by other defendants and therefore, denies the allegations in Paragraph “24" as to those defendants and affirmatively denies the allegations in Paragraph “24" as they apply to eBaum’s.

21. Defendant denies any patent infringement of the 366 Patent. Defendant is without knowledge or information sufficient to form a belief as to willfulness by other defendants and therefore, denies the allegations in Paragraph “25" as to those defendants and affirmatively denies the allegations in Paragraph “25" as they apply to eBaum’s.

22. Defendant denies any patent infringement. The remaining allegations of Paragraph “26" are legal conclusions to which no response is required. To the extent that any response is required, such allegations are hereby denied.

23. The allegations of Paragraph “27" require no response. To the extent that any response is required, such allegations are hereby denied.

24. Defendant denies any and all allegations of the Complaint that are not expressly admitted above.

AS AND FOR A FIRST AFFIRMATIVE DEFENSE
DEFENDANT STATES:

1. eBaum’s does not infringe, has not infringed and does not and has not induced infringement or contributed to infringement of any claim of the 702 Patent or the 366 Patent

under any theory of infringement, including direct infringement, indirect infringement, literal infringement or infringement under the doctrine of equivalents.

2. The claims of the 702 Patent and the 366 Patent are invalid and void for failing to meet the requirements of Title 35, United States Code, including but not limited to Sections 102, 103 and 112 thereof.

3. As such, the Complaint fails to state a cause of action upon which relief may be granted.

AS AND FOR A SECOND AFFIRMATIVE DEFENSE
DEFENDANT STATES:

4. The Complaint fails to state a cause of action upon which relief may be granted.

AS AND FOR A THIRD AFFIRMATIVE DEFENSE
DEFENDANT STATES:

5. Plaintiff insufficiently served the Complaint upon Defendant, eBaum's, as required by law.

AS AND FOR A FOURTH AFFIRMATIVE DEFENSE
DEFENDANT STATES:

6. Plaintiff lacks jurisdiction over the person of Defendant eBaum's and therefore, is barred from recovering from the Defendant herein.

AS AND FOR A FIFTH AFFIRMATIVE DEFENSE
DEFENDANT STATES:

7. That this Court is the improper venue as Plaintiff failed to state a cause of action, has not obtained personal jurisdiction and therefore Plaintiff, is barred from recovering from Defendant herein.

AS AND FOR A SIXTH AFFIRMATIVE DEFENSE DEFENDANT STATES:

8. Plaintiff is estopped from asserting construction of any claim of the 702 Patent or the 366 Patent that covers any acts of the Defendant or any products made, used, sold or offered for sale by the Defendant because of amendments and arguments made by the inventor to overcome prior art to obtain allowance of the patent claims.

AS AND FOR A SEVENTH AFFIRMATIVE DEFENSE DEFENDANT STATES:

9. Plaintiff's claims for damages are barred by the equitable doctrine of laches in view of its unreasonable delay in bringing suit.

AS AND FOR A EIGHTH AFFIRMATIVE DEFENSE DEFENDANT STATES:

10. Plaintiff's claims for damages and request for prospective relief are precluded by intervening rights doctrine, including that set forth in 35 U.S.C. §§ 307 and 252 (as referenced in § 307).

AS AND FOR A NINTH AFFIRMATIVE DEFENSE DEFENDANT STATES:

11. Plaintiff's Complaint should be dismissed as Plaintiff lacks the legal capacity to sue.

AS AND FOR A TENTH AFFIRMATIVE DEFENSE DEFENDANT STATES:

12. The 702 Patent is invalid for failure to meet one or more conditions for patentability set forth in 35 U.S.C. §§ 101, et seq., including without limitations §§ 101, 102, 103 and 112.

13. The 366 Patent is invalid for failure to meet one or more conditions for patentability set forth in 35 U.S.C. §§ 101, et seq., including without limitations §§ 101, 102, 103 and 112.

PRAYER FOR RELIEF

WHEREFORE, Defendant, eBaum's respectfully requests the Court to order:

A. That the Complaint be dismissed in its entirety, with prejudice, and that Plaintiff take nothing;

B. A declaration that eBaum's has not infringed and does not infringe any valid claim of the 702 Patent and that eBaum's has not induced infringement of any valid claim of the 702 Patent;

C. A declaration that eBaum's has not infringed and does not infringe any valid claim of the 366 Patent and that eBaum's has not induced infringement of any valid claim of the 366 Patent;

D. A declaration that the 702 Patent is invalid;

E. That Defendant eBaum's be awarded attorney's fees relative to the defense of this action;

F. That this is an "exceptional case" under 35 U.S.C. § 285, thereby entitling Defendant eBaum's to an award of attorney's fees;

G. Any and all further relief this Court deems proper.

Dated: September 26, 2007

Respectfully submitted,

By: /s/ *Michael E. Jones*
Michael E. Jones, Esq.
State Bar No.: 10929400
POTTER MINTON
A Professional Corporation
110 N. College Suite 500 (75702)
PO Box 359
Tyler, Texas 75710
903-597-8311 Telephone
903-593-0846 Facsimile
mikejones@potterminton.com

Of Counsel:
CULLEY, MARKS, TANENBAUM & PEZZULO, LLP
Frank G. Montemalo, Esq.
Attorneys for Defendant e'Baums World,Inc.
36 West Main Street Suite 500
Rochester, New York 14614
585-546-7830 Telephone
585-546-6456 Facsimile
fgmontemalo@culleymarks.com

CERTIFICATE OF SERVICE

I hereby certify that all counsel of record who have consented to electronic service are being served with a copy of this document via the Court's CM/ECF system per Local Rule CV-5(a)(3) on this the 26th day of September, 2007. Any other counsel of record will be served by first class U.S. mail on this same date.

/s/ *Michael E. Jones*
Michael E. Jones